

ADMINISTRATIVE MATERIALS "T"

MODEL ROAD USE AND MAINTENANCE DECLARATION

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SUBDIVISION

ROAD USE AND MAINTENANCE DECLARATION

This Declaration is made this ____ day of ____, 200_ by _____, hereinafter referred to as "Declarant".

WHEREAS, the DECLARANT is the owner of certain real property that has been divided into Lots 1 – ____ as shown on the subdivision plat on file and of record in the office of the Lake County Clerk and Recorder entitled _____, located in Section _____ Township _____ North, Range _____ West, Lake County, Montana, and

WHEREAS, the DECLARANT does hereby give, grant and convey unto all subsequent landowners, their successors and assigns, the right, privilege and authority to construct, reconstruct, maintain, operate, repair, improve, and to travel upon and use, a road, pedestrian/bicycle trail and necessary fixtures and appurtenances through, over, and across the right of way and access easement(s) shown on the subdivision plat.

WHEREAS, the DECLARANT wishes to subject the real property to requirements for the future maintenance of the internal roadway(s) as shown on the subdivision plat hereinafter set forth, each of which shall inure to the benefit of and pass with the said property, and each and every parcel thereof, and any owner thereof;

NOW THEREFORE, the DECLARANT hereby declares that the real property is and shall be held, transferred, sold and conveyed subject to the following requirements:

1. The roadway within the subdivision shall be maintained in a good and passable condition under all traffic and weather conditions.
2. The costs for maintenance and repair of the roadway and pedestrian/bicycle facilities, including associated stormwater infrastructure and signage, shall be divided equally between each lot owner. Each lot owner shall pay its pro-rata share and have one vote per lot, including but not limited to:
 - a. Maintenance and repair of the roadway(s) and pedestrian/bicycle facilities, including snow removal, grading, dust control and other surface maintenance
 - b. Maintenance and repair of the stormwater culverts and drainage features;
 - c. Maintenance and repair of all roadway signage and striping;
 - d. The routine maintenance of the items in a. through c. above shall be performed when the Board of Directors for the _____ Homeowners Association, Inc. or the

- landowners in the _____ subdivision votes by simple majority to have such maintenance or improvements performed.
- e. Private driveways must be constructed without encumbering the drainage ways adjacent to the roadway, and
 - f. Major improvements including new pavement, signage, curbs and sidewalks, which may be authorized by a vote of at least 75 percent of the lot owners.

Term: This declaration shall run with and bind the land in perpetuity. It may be amended at any time by the owners of 75% of all the lots either at a meeting of the Owners or by written ballot mailed to all the Owners or by a combination of votes at a meeting and by written ballot. To be effective the Board of Lake County Commissioners must approve amendments in writing, and the Amendments must be filed in the Office of the Clerk and Recorder of Lake County, MT with a document showing the specific amendment made and a certification by that the amendment received the required approval of the landowners.

Enforcement: Any Owner and/or the Homeowners Association shall have the right to enforce by any proceeding at law or in equity all covenants, conditions and restrictions now or hereafter imposed by the provisions of this Declaration. Failure by the Owner(s) or by the Homeowners Association to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Delinquent Payments: In the event payment for any assessment becomes delinquent, the assessment and interest and the cost of collection shall become a continuing lien on the lot.

Outside Parties: In the event a party to this agreement subdivides a lot, or in the event outside parties may be required to use the road and pedestrian/bicycle facilities, the owners of the additional lots shall be subject to this agreement and pay a pro rata share for maintenance and improvements and shall have one vote per lot.

Severability: Invalidation of any of these covenants or restriction by judgment or court order shall in no way affect any of the remaining provisions, which shall remain in full force and effect.

Arbitration: In the event of a dispute under this Declaration, the parties agree that the dispute shall be determined and resolved by binding arbitration. The determination of the arbitrator shall be final and binding upon the parties and their respective successors and assigns. The determination may be filed in a court of competent jurisdiction as a final judgment. The arbitrator is authorized, but not required, in the arbitrator's discretion, to award attorney's fees and costs to the prevailing party. If no such award is made, the costs of the arbitration shall be paid equally by the parties.

IN WITNESS WHEREOF, the Declarant has hereunto set his hand this ____ day of _____, 20 ____.

Declarant

STATE OF MONTANA)
) ss.
County of _____)

On this ____ day of _____, 20 ____, before me, the undersigned, a Notary Public for the State of Montana, personally appeared _____, known to me to be the persons whose name is subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal this ____ day of _____, 20 ____.

Notary Public for the State of Montana
Residing at _____, Montana
My commission expires _____